

Memorandum

To: Lisa Briggs
From: James Ingram
Re: Does the Creation of an Audit Committee Constitute a Legislative Delegation and thus Violate California Constitution's Article 11, Section 11?
Date: August 1, 2007

City Attorney representatives raised an important objection to the Subcommittee on Financial Reform's actions regarding an Audit Committee. Subcommittee staff objected to the City Attorney representative's interpretation of Article 11, Section 11.

Article 11, Section 11 of the California Constitution reads:

"§ 11. Delegation of local powers

(a) The Legislature may not delegate to a private person or body power to make, control, appropriate, supervise, or interfere with county or municipal corporation improvements, money, or property, or to levy taxes or assessments, or perform municipal functions." [Subsection (b) relates to deposit and investment of public funds, and has therefore been omitted because it is not relevant here.]

First of all, it is important to note that we are not discussing a legislative delegation here, but a delegation by the City Charter itself. The prohibition on the legislature is not necessarily valid as applied to cities acting according to their charters. The annotations for this Constitutional provision are available on LexisNexis, and they clearly indicate that the City Attorney representative's reading is an incorrect one.

In *Adams v. Wolff*, the court found that: "The prohibition of Art XI § 13, of delegation by the Legislature to any "special commission" power to perform any municipal function is a restraint on the Legislature's power to interfere with municipal affairs and in no way regulates what may be done by a municipal corporation by charter provision" ([Note that Art XI § 13 became Art XI § 11 in subsequent amendments of the state constitution] *Adams v Wolff* (1948) 84 Cal App 2d 435, 190 P2d 665).

In the case of *Wilson v Board of Supervisors*, the courts further amplified this finding: "The purpose of this section was to emancipate municipal governments from the authority and control formerly exercised over them by the Legislature" (*Wilson v Board of Supervisors* (1957, 3rd Dist) 154 Cal App 2d 101, 315 P2d 748).

To contend that an Audit Committee is illegal under the provisions of Article 11, Section 11 would be tantamount to declaring that virtually any commission to which a city charter delegates authority would be unconstitutional. Empirically, the City Attorney's argument appears ridiculous because most cities within the state of California would have some commission rendered problematic based on the interpretation that office has offered.

Staff would encourage Subcommittee members not to regard the provisions of California Constitution's Article 11, Section 11 as a requirement that the City's formation of an Audit Committee mandates any participation by City Council members upon such a committee, much less as a majority of its members.